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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,629	06/27/2003	Chuck Kurtz	27799-023	8458
35437	7590	01/13/2006		
MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO 666 THIRD AVENUE NEW YORK, NY 10017				
			EXAMINER SHAPIRO, JEFFERY A	
			ART UNIT	PAPER NUMBER
			3653	

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/608,629	Applicant(s) KURTZ ET AL.	
	Examiner Jeffrey A. Shapiro	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-9, 11-15, 17-18 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 11-15, 17, 18 and 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/14/05 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4-9, 11-15, 17-18 and 20-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Watanabe et al (US 5,543,607). Watanabe discloses a self-checkout system having a conveyor (51) with sensors (52a) that cause the belt of the conveyor to start transporting the items forward and past a scanner (53) and then sensors (52b) that cause the belt to stop upon sensing the item. Also, if the scanner cannot read the bar code on the item, the belt is stopped. Watanabe also discloses a sensor (63) that detects the presence of an operator.

Note that the operator/purchaser is in effect "sensed" when he/she places an item onto the conveyor belt. See also abstract of Watanabe, which describes

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Applicant's claimed apparatus. Note also that processing areas (54) in figure 1A or (302) in figure 1B. Note also figure 3, which describes stocker area (10), in which the conveyor moves either forward or reverse directions. See col. 10, lines 42-53.

Processing is considered to include either preparing items for entry into or exit out of the machine. Note that the sensors that sense movement, for example, as described in col. 10, lines 42-53, are considered to be, at the least, the functional equivalent of proximity sensors. Note also that Applicant does not provide any specific reasons for using proximity sensors over other types of sensors.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4-9, 11-15, 17-18 and 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe in view of Begum et al (US 5,420,606).

Watanabe discloses a self-checkout system having a conveyor (51) with sensors (52a) that cause the belt of the conveyor to start transporting the items forward and past a scanner (53) and then sensors (52b) that cause the belt to stop upon sensing the item. Also, if the scanner cannot read the bar code on the item, the belt is stopped. Watanabe also discloses that the operator is sensed by a sensor (63), the system then becoming operable.

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Watanabe does not expressly disclose, but Begum discloses the use of a motion sensor to sense motion of a customer and either "wake up" or deactivate a device. See Begum, col. 6, lines 11-17, which discuss use of motion detector (62) to detect a shopper. Begum in col. 6, lines 35-38 disclose mounting such a motion detector (70) on a checkout counter (41).

The suggestion/motivation would have been to "conserve power" by turning off the conveyor belt when it is not needed. See Begum, col. 6, lines 11-17.

Response to Arguments

6. Applicant's arguments filed 10/13/05 have been fully considered but they are not persuasive. Applicant asserts that Watanabe does not disclose the claimed invention. However, as discussed above, Watanabe discloses all of the limitations found in the independent claims, as well as the dependent claims. In particular to Applicant's assertions, Watanabe discloses a processing area located downstream from a conveyor with a start sensor, the start sensor being the sensors (52a) and the stop sensors being (52b). See Watanabe, col. 8, lines 16-27. See also col. 8, lines 28-47, which describes the conveyor belt moving in either forward or reverse directions. Therefore, an argument can be made for either element (54) or element (302) being construed as the processing area. Watanabe's system allows a customer/operator to place items on the pre-processing area, such as (54) or (302) or (10) and then place them on the conveyor which moves them past scanner (53a-g). Note also Watanabe's figure 3, which illustrates another embodiment having sensors (8) arranged in continuous fashion from one end of the conveyor to the other. See col. 9, lines 14-44. Col. 10, lines 45-54

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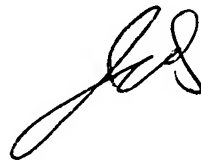
describe the transport of items in either a forward or a reverse direction, with sensors (8) detecting both item presence as well as item movement. Col. 11 describes the use of either an automated scanner or a hand scanner. Once the item is transported, it is then scanned and is ready to be bagged. Note also figure 1b shows another embodiment where the operator detection sensor (63) is placed near the scanning area. At the very least, it would have been obvious to place the operator sensor (63) similarly near the scanning section where scanners (5 and 7) are located in the embodiment shown in figure 3, since this location is where an operator would be standing to operate the system.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (571)272-6944. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Shapiro
Examiner
Art Unit 3653

January 3, 2006



GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER